

**STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC DEVELOPMENT
OFFICE OF FINANCIAL AND INSURANCE SERVICES**

Before the Commissioner of Financial and Insurance Services

**OFFICE OF FINANCIAL AND
INSURANCE SERVICES,**

Petitioner,

v

MICHAEL KROLL,

Respondent.

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Case No. 99-174-L

Docket No. 1999-3838

Enforcement No. 99-237

For the Petitioner:

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**Issued and entered
this 27th day of December 2004
by Linda A. Watters
Commissioner**

FINAL DECISION

**I
BACKGROUND**

The Independent Hearing Officer issued a Proposal for Decision in this matter finding that the Respondent engaged in misrepresentation in sales and submitted forged documents to the insurer. He recommended that the Commissioner fine the Respondent and

revoke his insurance license. The Respondent filed Exceptions.

II ISSUES

The principal issues in this matter are:

1. Did the Respondent misrepresent that dividends on current life insurance policies would be sufficient to cover premiums on new life insurance policies?
2. Did the Respondent misrepresent the condition of an insurance policy when a policyholder asked him about loans taken out on that policy?
3. Did the Respondent knowingly submit documents with forged policyholder signatures to the insurer?

III ANALYSIS

Except as discussed below, the findings of fact in the Proposal for Decision are supported by a preponderance of the evidence and the conclusions of law are supported by reasoned opinion. The Proposal for Decision is attached, adopted, and incorporated by reference into this Final Decision. The analysis that follows is premised upon a reading of the Proposal for Decision.

In selling policies to three consumers, the Respondent told them that the dividends on existing policies would cover the premiums on the new policies. The Independent Hearing Officer concluded that this constituted misrepresentation because the Respondent said something would happen that he had no way of knowing would

happen. However, there is not a preponderance of evidence to support a finding of misrepresentation by the Respondent in light of the following:

- Dividends are not typically guaranteed in life insurance policies. It is customary for insurers to make projections as to future dividends, which turn on investment performance.
- The Respondent made projections based upon information supplied by the insurer. Life insurance producers typically rely upon the expertise of companies as to dividend projections.
- Company materials emphasize that projections are not guaranteed. [Exhibit 25, "...Dividends are not guaranteed and are not estimates of the future...."]
- The Respondent did not guarantee that the dividends would cover the premiums. [Tr 87, 11/07/01; Tr 52, 01/07/02; Exhibit 25]
- As to the XXXXXX transaction, the prediction that dividends would cover premiums was correct for the six years the policy was in force. [Exhibit 172]
- As to the XXXX transaction, the prediction that dividends would cover premiums was correct, and the policy became fully paid-up in 1995. [Tr 145-6, 11/07/01; Exhibit 172]
- As to the XXXXXX transaction, the dividends did not cover the premiums because the Respondent failed to implement a planned reduction in premiums after three years. He conceded this error in implementation, but this was not

misrepresentation in the sale of the policy and, moreover, was not an allegation in the Complaint.

The Independent Hearing Officer did not make conclusions of law as to allegations in the Complaint that the Respondent misled a policyholder when she inquired about company statements respecting policy loans. [Paragraphs 24 and 25 on Page 4] The Staff proved these allegations by a preponderance of the evidence.

In 1995, XXXX contacted the Respondent after receiving a statement from the insurer that indicated a loan had been taken against one of her policies. The Respondent told her falsely that the term “loan” was used by the insurer to indicate the transfer of dividends. He made this false representation to her at least three times. [Tr 77, 84-85, 104-6, 11/5/01] This has particular significance because XXXX had specifically told the Respondent that, in purchasing a new policy, she did not want anything that would be detrimental to her existing insurance. [Tr 62, 11/05/01]

In his Exceptions, the Respondent contends that other persons in the agency could have submitted the forged signatures submitted to the insurer on customer service request forms. This conjecture is offset by the preponderance of the evidence adduced by the Staff as to the submission of forged documents. This evidence includes:

- The forged customer service request forms in evidence were handwritten by the Respondent. [Tr 43-56, 10/11/02]
- The Respondent gave signed forms to XXXXXX, an agency secretary, for

mailing to the company. [Tr 14, 01/09/02]

- The Respondent had control of the forms until they were sent to the insurer.
- XXXXXX twice witnessed the Respondent trace the signature of a policyholder from an old customer service form to a new customer service form. [Tr. 14, 15, and 27, 01/09/02]
- XXXXXXXX, the supervisor of XXXXXX, observed the Respondent trace a policyholder's name to an insurance form. [Tr 20-24, 01/30/02]
- Tracing was often furthered by using sunlight. Around the office, it was referred to as "put in on the window." The Respondent used this phrase. [Tr 34, 01/09/02; Tr 13-14, 01/30/02]
- Both XXXXXX and XXXXXXXX witnessed the Respondent supposedly obtain a customer's signature when it would have been impossible for him to do so.

Within minutes or hours, he would produce a signed document even though the customer did not come to the office. This procedure was called "carrier pigeon," as though the forms were sent and returned in this manner. [Tr 36-37, 01/09/02]

This tracing of names was against company policy. [Tr 11, 13-14, 01/09/02] It marks the Respondent as untrustworthy to the company because he sent documents that the company would believe had authentic signatures on them. Knowingly submitting documents with forged, unauthorized customer signatures also marks the Respondent as untrustworthy to those customers.

In light of the forgoing discussion, findings and conclusions of the Independent Hearing Officer that are not adopted into this Final decisions are those relating to misrepresentation in the sale of the policies. This involves MCL 500.2005(a) [mistakenly cited as 2005(1) on page 21], MCL 500.2026(1)(a) [no course of conduct shown, and this deals with claims in any event], and 500.2064(2) [only applies to taking out policies].

Additionally, the recommendation for fines under MCL 500.1242(2) cannot be followed as only sanctions against the license are provided. Revocation under this section is warranted. Individuals and businesses depend upon insurance producers to meet their insurance needs. Failure to meet those needs can lead to financial disaster. It is the Commissioner's duty to only license and continue licensing producers that are honest and trustworthy.

Fines are authorized under MCL 500.2038(1)(a). Following the recommended amount for violation of MCL 500.2005(a), the Respondent should be fined \$1,500 for the three acts of misrepresentation involving XXXX. The Commissioner is required to order the Respondent to cease and desist from further violations.

IV FINDINGS OF FACT

Based upon the record, it is found that, in addition to the findings contained in the First Amended Proposal for Decision, the Respondent three times misrepresented to XXXX that "loan" meant transfer of dividends.

V
CONCLUSIONS OF LAW

Based upon the findings above, it is concluded that, in addition to the conclusions of law contained in the First Amended Proposal for Decision, the Respondent violated MCL 500.2005(a) in connection with XXXX because he misrepresented the condition of her policy.

VI
ORDER

Therefore, it is ORDERED that:

1. The First Amended Proposal for Decision, as adopted and made part of this Final Decision, is amended to conform to the analysis, findings, and conclusions made separately in this Final Decision.
2. The Respondent shall cease and desist from misrepresenting the conditions of insurance policies.
3. The Respondent shall pay a civil penalty to the State of Michigan of \$1,500 by February 28, 2005.
4. The Respondent's license to act as an insurance agent or producer is revoked.